

REMARKS

The Office Action dated May 3, 2005 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1 and 4-19 are now pending in this application. Claims 1-19 stand rejected. Claims 2, 3, and 20 have been canceled.

The rejection of Claims 1, 2, 5, and 6 under 35 U.S.C. 102(b) as being anticipated by Grimaldi (US 5,416,983) is respectfully traversed.

Grimaldi describes a dispenser for use in automatically dispensing a beverage. The dispenser includes a spout (3) configured to deliver a liquid from a volume measure device (4). The dispenser has three emitters (14,15, and 16) positioned in a hood (1a) extending over the spout. The emitters intersect at a point (18) and are coupled to a corresponding respective receiver (14b, 15b, and 16b) that is positioned in a beverage support (11). Notably, Grimaldi does not describe nor suggest having each emitter positioned above each receiver on the same wall.

Claim 1 recites a method for actuating a dispensing system, wherein the system includes a dispenser cavity and a dispenser, the method includes “intersecting at least two beams of light, wherein intersecting the at least two beams of light comprises coupling a first infra-red (IR) light emitting diode (LED) element on a first wall of the cavity and coupling a second IR LED on a second wall of the cavity opposite the first wall...sensing the at least two beams of light, wherein sensing the at least two beams of light comprises coupling a first

IR photodetector on the first wall of the cavity and coupling a second IR photodetector on the second wall of the cavity, wherein each IR photodetector is positioned above each IR LED...and actuating the dispenser system based upon said sensing.”

Grimaldi does not describe nor suggest a method for actuating a dispensing system as recited in Claim 1. Specifically, Grimaldi does not describe nor suggest having each IR photodetector positioned above each IR LED on the same wall. Rather, in contrast to the present invention, Grimaldi describes a dispensing system that includes emitters positioned in a hood and receivers positioned in a beverage support. Accordingly, for at least the reasons above, Claim 1 is respectfully submitted to be patentable over Grimaldi.

Claim 2 has been canceled. Claims 5 and 6 depend directly from independent Claim 1. When the recitations of Claims 5 and 6 are considered in combination with the recitations of Claim 1, the Applicants submit that dependent Claims 5 and 6 likewise are patentable over Grimaldi.

For the reasons set forth above, the Applicants respectfully submit that the 102 rejection of Claims 1, 2, 5, and 6 be withdrawn.

The rejection of Claims 3, 4, and 7-19 under 35 U.S.C. 103(a) as being unpatentable over Grimaldi is respectfully traversed.

Grimaldi is described above.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. The mere assertion that “[i]t would have been obvious...to

configure the light emitting and receiving optical element in any suitable mounting wall, since (the location of the emitters and receivers) in lieu of those use in the reference solves no stated problem and would be obvious matter of design choice within the skill of the art...” does not support a prima facie obvious rejection. Rather, each allegation of what would have been an obvious matter of design choice must always be supported by citation to some reference work recognized as standard in the pertinent art, and the Applicants given an opportunity to challenge the correctness of the assertion or the repute of the cited reference. The Applicants have not been provided with the citation to any reference supporting the combination made in the rejection. The rejection, therefore, fails to provide the Applicants with a fair opportunity to respond to the rejection, and fails to provide the Applicants with the opportunity to challenge the correctness of the rejection. Therefore, the Applicants respectfully request that the Section 103 rejection be withdrawn.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on modifying the teachings of a single patent in an attempt to arrive at the claimed invention. However, there is no teaching nor suggestion in the cited art for the modifications deemed obvious by the Examiner, and as such, the Section 103 rejection appears to be based

on a hindsight reconstruction in which isolated elements of a single disclosure have been picked and chosen in an attempt to deprecate the present invention. Of course, such a hindsight reconstruction is impermissible, and for this reason alone, the Applicants request that the Section 103 rejection be withdrawn.

Further, and to the extent understood, Grimaldi does not describe nor suggest the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites a method for actuating a dispensing system, wherein the system includes a dispenser cavity and a dispenser, the method includes “intersecting at least two beams of light, wherein intersecting the at least two beams of light comprises coupling a first infra-red (IR) light emitting diode (LED) element on a first wall of the cavity and coupling a second IR LED on a second wall of the cavity opposite the first wall...sensing the at least two beams of light, wherein sensing the at least two beams of light comprises coupling a first IR photodetector on the first wall of the cavity and coupling a second IR photodetector on the second wall of the cavity, wherein each IR photodetector is positioned above each IR LED...and actuating the dispenser system based upon said sensing.”

Grimaldi does not describe nor suggest a method for actuating a dispensing system as is recited in Claim 1. Specifically, Grimaldi does not describe nor suggest positioning each IR photodetector above each IR LED on the same wall. Rather, in contrast to the present invention, Grimaldi describes a dispensing system that includes emitters positioned in a hood

and receivers positioned in a beverage support. Accordingly, for at least the reasons above, Claim 1 is respectfully submitted to be patentable over Grimaldi.

Claim 3 has been canceled. Claim 4 depends directly from independent Claim 1. When the recitations of Claim 4 are considered in combination with the recitations of Claim 1, the Applicants submit that dependent Claim 4 likewise is patentable over Grimaldi.

Claim 7 recites an optical system for a dispenser system comprising “at least two light emitting optic elements mounted on opposing first and second dispenser walls...and at least two light receiving optic elements mounted on said opposing first and second dispenser walls, wherein each of said at least two light receiving optic elements is in optical communication with each of said at least two light emitting optic elements, wherein said at least two light receiving optic elements are in electromechanical communication with said dispenser system.”

Grimaldi does not describe nor suggest an optical system for a dispenser system as is recited in Claim 7. Specifically, Grimaldi does not describe nor suggest an optical system for a dispenser system that includes at least two light emitting optic elements mounted on opposing first and second dispenser walls and at least two light receiving optic elements mounted on the opposing first and second dispenser walls. Rather, in contrast to the present invention, Grimaldi describes a dispensing system that includes emitters positioned in a hood and receivers positioned in a non-opposing beverage support. Accordingly, for at least the reasons above, Claim 7 is respectfully submitted to be patentable over Grimaldi.

Claims 8-13 depend directly from independent Claim 7. When the recitations of Claims 8-13 are considered in combination with the recitations of Claim 7, the Applicants submit that dependent Claims 8-13 likewise are patentable over Grimaldi.

Claim 14 recites a dispenser system comprising “a top wall, a bottom wall, and a cavity extending therebetween, said top wall parallel said bottom wall...a first wall, a second wall, and a third wall positioned therebetween, said second wall opposite said first wall, said third wall substantially perpendicular to both said first and second walls, said first, second, and third walls substantially perpendicular to both said top wall and said bottom wall...at least one dispenser coupled to said third wall...and an optical system coupled to said first and said second wall and in electromechanical communication with said at least one dispenser.”

Grimaldi does not describe nor suggest a dispenser system as is recited in Claim 14. Specifically, Grimaldi does not describe nor suggest a dispenser system that includes an optical system coupled to a first and a second wall and in electromechanical communication with at least one dispenser. Rather, in contrast to the present invention, Grimaldi describes a dispensing system that includes emitters positioned in a hood and receivers positioned in a non-opposing beverage support. Accordingly, for at least the reasons above, Claim 14 is respectfully submitted to be patentable over Grimaldi.

Claims 15-19 depend directly from independent Claim 14. When the recitations of Claims 15-19 are considered in combination with the recitations of Claim 14, the Applicants submit that dependent Claims 15-19 likewise are patentable over Grimaldi.

For the reasons set forth above, the Applicants respectfully submit that the 103 rejection of Claims 3, 4, and 7-19 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Robert B. Reeser III', is written over a horizontal line.

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